

**FINAL REPORT
OF THE
ENVIRONMENTAL QUALITY
SERVICE COUNCIL**



**Indiana Legislative Services Agency
200 W. Washington St., Suite 301
Indianapolis, Indiana 46204-2789**

November 2008

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November 2008

A copy of this report is available on the Internet. Reports, minutes, and notices are organized by committee. This report and other documents for this Council can be accessed from the General Assembly Homepage at <http://www.in.gov/legislative/>.

FINAL REPORT

I. STATUTORY AND LEGISLATIVE COUNCIL DIRECTIVES

IC 13-13-7 establishes the Environmental Quality Service Council (EQSC). IC 13-13-7-9 provides that the EQSC must

- (1) Study issues designated by the Legislative Council.
- (2) Advise the commissioner of the Indiana Department of Environmental Management (IDEM) on policy issues decided on by the EQSC.
- (3) Review the mission and goals of IDEM and evaluate the implementation of the mission.
- (4) Serve as a council of the General Assembly to evaluate:
 - (A) resources and structural capabilities of IDEM to meet IDEM's priorities; and
 - (B) program requirements and resource requirements for IDEM.
- (5) Serve as a forum for citizens, the regulated community, and legislators to discuss broad policy directions.
- (6) Submit a final report to the Legislative Council that contains at least the following:
 - (A) An outline of activities of the council.
 - (B) Recommendations for IDEM action.
 - (C) Recommendations for legislative action.

The Legislative Council also directed the EQSC to study whether state law should (1) require; or (2) encourage through incentives; the construction and renovation of public buildings and structures with the goal of achieving particular energy and environmental design ratings (HEA 1280-2008).

II. INTRODUCTION AND REASONS FOR STUDY

The EQSC met in order to discharge the various responsibilities outlined in law and to consider the topic assigned by the Legislative Council.

III. SUMMARY OF WORK PROGRAM

The EQSC met four times during the 2008 interim on the following dates: August 27, September 16, October 2, and October 8. A summary of the testimony is presented below.

IV. SUMMARY OF TESTIMONY

First Meeting–August 27, 2008

Commissioner's Report. Commissioner Easterly provided the following reports: EQSC IDEM Report--August 27, 2008; Legislative Report on CFO/CAFO Activities; August 2008 Administratively Extended NPDES Permits; Enforceable Operating Agreement Program Report; Permit Operation Fund Report; FY 2007 Annual Report on the Waste Tire Management Program; The Indiana Source Reduction & Recycling Annual Report; and the Annual Report of the Indiana Household Hazardous Waste Grant Program.

Antidegradation Implementation. Martha Clark Mettler, IDEM, provided the Council with an overview of the federal framework and the Indiana rulemaking process involved with implementing the antidegradation rule. **Kay Nelson, Executive Director, Northwest Indiana Forum**, explained

the importance to the economy that anyone wanting to establish a business be able to obtain information on what is needed for a permit and the time frame involved with obtaining a permit. **Rae Schnapp, Ph.D., Water Policy Director, Hoosier Environmental Council**, explained that the Clean Water Act requires states to adopt certain water quality standards. Federal rules require states to maintain water quality unless lowering water quality is necessary to accommodate important social or economic development. Dr. Schnapp stated that IC 5-2-11.7, which pertains to outstanding state resource waters, cannot be implemented because of lack of clarity and because of legislative changes passed in 2000. The rules provide that an outstanding state resource waters must be protected without degradation. However, IC 13-18-3-2 provides that, among other things, the rules must set a de minimis level of pollution where no antidegradation review is required. The goal should be to review new or increased discharges of pollutants with few exceptions.

Ms. Nelson provided an overview of the progress that has been made in other states relative to the endorsement of the Great Lakes Compact.

Second Meeting–September 16, 2008

Green Building Standards. **David Phippen, Governor's Office**, explained that Executive Order 08-14 provides that all new state buildings must be designed, constructed, and maintained to achieve maximum energy efficiency to the extent that the efficiency can be accomplished on a cost-effective basis. **Bill Brown, Indiana Chapter of the American Institute of Architects and the Indiana Chapter of the U.S. Green Buildings Council**, supported efforts that would move the state towards more sustainable buildings and communities. **Fred Gray, Green Way Supply, Inc.**, argued that the public should be given the same consideration given coal companies in terms of support for using safe products. **Andrew Berger, Association of Indiana Counties**, supported mandating local units to construct green buildings for new construction in cases where costs would be recovered in a few years. **Miriam Dant, Indiana Association of Cities and Towns**, encouraged using incentives as opposed to mandates. **Tim Maloney, Hoosier Environmental Council**, explained that buildings produce 39% of U.S. CO₂ emissions. Green buildings save on average 25% to 30% in energy costs over non-green buildings. **Gretchen White, Indiana Builders Association**, explained that in 2005 the National Association of Home Builders partnered with the International Codes Council to create the National Green Building Standard which uses the federally recognized Energy Star program as a benchmark and incorporates environmental considerations as well as resource efficiency through the design, construction, and operation of a home. The standard will offer a cafeteria plan from which builders can choose and requires a third-party verifier. **Trevor Vance, American Forestry and Paper Association**, discussed forest certification programs. He argued that initiatives should consider total points and not focus solely on plans. All building systems should be included. He would like to see any legislation include the Green Globes rating system. **Kate Wright and Anthony Baratta, DePauw University Environmental Policy Project**, explained other states' policies pertaining to green building initiatives. **Mark Rossolo, Green Building Initiative**, provided the Council with information pertaining to Green Globes.

Indiana Energy Code. **Holly Yensel, Hoosier Energy**, noted that the Indiana energy code had not been updated since 1992. Research indicates that making the building shell more energy efficient saves energy. Energy savings have more than paid for increases in costs to the buildings. **Mr. Maloney, Hoosier Environmental Council**, encouraged the adoption of the current version of the

International Energy Conservation Code with incorporation of updates each time the International Code Council updates the code.

Geothermal Systems for Buildings. Michael Lutz, **DePauw University Environmental Policy Project**, provided the Council with an overview of how geothermal systems work, the benefits of geothermal systems, the potential for the systems, barriers to use, the current state of use, and suggestions for what the General Assembly could do to encourage use. **Randy Stair and Woody Hogan, Stair Associates Inc.**, provided the Council with information pertaining to the energy savings experienced by South Madison Community School Corporation through the use of a geothermal system. **Tony Cooper, Water Furnace International**, explained the history and functioning of geothermal technology. The return on investment for a geothermal system for residences is 2-7 years with an energy savings of 15% to 45%.

Third Meeting–October 2, 2008

CAFO/CFO Permitting and Enforcement Issues. Commissioner Easterly provided an overview of IDEM's permitting and enforcement activities relative to confined feeding operations. In Indiana, there are 2,211 operations. The percent of operations that are inspected each year is less than 20%. **Barbara Sha Cox, Indiana CAFO Watch**, questioned the locations of animal operations in Lawrence, Washington, and LaPorte Counties, suggesting that the facilities and manure applications were located close to residences, near creeks that flow into the Kankakee River, near caves, or in floodplains. She stated that storage facilities were inadequate and spills are not reported or not acted on. She suggested legislation that should require, among other things, good character clauses; yearly inspections; and greater setbacks from schools, hospitals, nursing facilities, and state parks. **David Hardin, CAFO operator**, described a certification program of the State Department of Agriculture and provided the Council with a copy of "Ethical Principles for U.S. Pork Producers." Based on IDEM's report, 1% of spills are from registered farms. More inspections would not hurt. Any additional costs should be borne by the taxpayer. **Dennis Thorton, President, Marshall County Planning Commission**, Marshall County BZA and Technical Review Committee, and a member of the Marshall County CAFO ordinance-writing committee, expressed his concerns about the location of the 3,500-head Walnut Grove Dairy that was approved by IDEM and DNR in St. Joseph County. The approved site is partially located in a floodplain. A study by Professor Darrell Leap, PhD, Purdue University, concluded that the site is not suitable for the proposed use. The proposed operator has a compilation of environmental violations. He urged the Council to change criteria for issuing permits. He requested that permits not be granted in flood-prone areas or to operators with repeated or unresolved violations. The state could set minimum setback standards, but local governments should have the right to establish setbacks greater than the minimum. **Rae Shnapp, Hoosier Environmental Council**, described shortcomings of the current regulatory framework. Spreading manure in a floodplain is common. There is no consideration of the pathogen content of manure, and manure management plans are not enforceable nor are they available to the public. Current regulatory framework does not consider air emissions, quality of life, property values, and impacts to health. She recommended requiring manure pits to be covered, imposing setbacks, and including land application areas.

Electronic Waste and Recycling. Commissioner Easterly provided an overview of IDEM's work in electronic waste and recycling. **Carrie Hamilton, Executive Director, Indiana Recycling Coalition**, recommended a producer responsibility model for e-scrap management. **Mark**

VanderKoy, CloudBlue Technologies, Inc., stated that the stricter the recycling law, the more the law helped his business. **Cheri Prather, Cascade Asset Management**, urged the enactment of producer responsibility legislation in order to accelerate recycling of electronic equipment. She urged the Council to enact e-waste legislation to provide environmental benefits, grow clean-technology jobs, and reduce taxpayer subsidies. **Terry Garrin, private citizen, Knightstown**, supported e-waste recycling.

Water and Wastewater Infrastructure Needs. **Sen. Gard** reported on water and wastewater infrastructure needs, citing a 2003 infrastructure needs study that was conducted by the Indiana Advisory Commission on Intergovernmental Relations and analyzed by the Center for Urban Policy and the Environment at IUPUI. Financial needs found in the study consisted of the following: CSO corrections--\$5.5 billion; wastewater conveyance and treatment--\$3.3-\$3.8 billion; remediation of failing septic systems--\$1.5--\$2.3 billion; storm water management--\$500 million; and drinking water distribution and treatment--\$1.7 billion. Total financial needs equaled \$12.4-\$13.9 billion. An inventory of current state infrastructure needs as well as an inventory of other states' solutions are needed. **Rhonda Cook, Indiana Association of Cities and Towns**, supported Sen. Gard's initiative. She noted that federal funding for infrastructure has been cut by 20% in 2005; 19% in 2006; and 23% in 2007. **Glenn Pratt** noted that early on in the federal program, other states obtained funding while Indiana did not. Now the federal dollars are decreasing. He supported Sen. Gard's proposal to obtain an inventory of current infrastructure needs.

Fourth Meeting--October 8, 2008.

At the fourth meeting the Council discussed recommendations for the final report.

V. COMMITTEE FINDINGS AND RECOMMENDATIONS

The following recommendations for inclusion in the final report and the final report were approved by voice vote of a majority of the appointed members of the Council.

Water and Wastewater Infrastructure. The EQSC recommends that the General Assembly support an updated study on funding water and wastewater infrastructure needs through a variety of funding sources.

E-Waste. The EQSC looked at existing E-waste programs in Indiana and other states, including the distribution of costs and landfill bans. After hearing testimony, the EQSC recommends to the General Assembly expanding opportunities for E-waste recycling and looking at the roles of manufacturers, retailers, and consumers with the goal of making it more widespread and convenient.

Energy Code. The EQSC recommends that the General Assembly and the administration direct the Indiana Fire Prevention and Building Safety Commission to examine the Indiana Energy Code and look to updating the code with input from a broad group of stakeholders.

Green Building Standards. The EQSC recommends that the General Assembly find ways to encourage the adoption of green building standards, including Leadership in Energy and Environmental Design (LEED), Green Globe, or an equivalent standard, in publicly funded

construction projects.

CAFOs. The General Assembly should adopt the confined feeding good character disclosure and enforcement requirements contained in SB 431-2007, amended to allow IDEM to consider a permit applicant's compliance history outside the United States.

W I T N E S S L I S T

Anthony Baratta, DePauw University Environmental Policy Project
Andrew Berger, Association of Indiana Counties
Bill Brown, Indiana Chapter of the American Institute of Architects and the Indiana Chapter of the
U.S. Green Buildings Council
Rhonda Cook, Indiana Association of Cities and Towns
Tony Cooper, Water Furnace International
Barbara Sha Cox, Indiana CAFO Watch
Miriam Dant, Indiana Association of Cities and Towns
Tom Easterly, IDEM Commissioner
Terry Garrin, private citizen, Knightstown
Fred Gray, Green Way Supply, Inc.
Carrie Hamilton, Executive Director, Indiana Recycling Coalition
David Hardin, CAFO operator
Woody Hogan, Stair Associates Inc.
Tim Maloney, Hoosier Environmental Council
Martha Clark Mettler, IDEM
Kay Nelson, Executive Director, Northwest Indiana Forum
David Pippen, Governor's Office
Cheri Prather, Cascade Asset Management
Glenn Pratt
Mark Rossolo, Green Building Initiative
Rae Schnapp, Ph.D., Water Policy Director, Hoosier Environmental Council
Randy Stair, Stair Associates Inc.
Dennis Thorton, President, Marshall County Planning Commission, Marshall County BZA and
Technical Review Committee, and the Marshall County CAFO Ordinance-Writing
Committee
Trevor Vance, American Forestry and Paper Association
Mark VanderKoy, CloudBlue Technologies, Inc.
Gretchen White, Indiana Builders Association
Kate Wright, DePauw University Environmental Policy Project
Holly Yensel, Hoosier Energy